IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 282 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT KHUSALDAS SOMAIYA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR RC KODEKAR Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2001

ORAL JUDGEMENT

Heard Mr. HR Prajapati learned advocate for the petitioner and Mr. RC Kodekar learned AGP for the respondent-State.

In the present petition, the order of detention

dated 6.11.2000 passed by the Police Commissioner, Ahmedabad City, has been challenged by the petitioner under Article 226 of the Constitution of India and the petitioner has been detained in Surat Jail as Class-II detenu.

Against the present petitioner, two offences are registered in respect to section 66(1)B, 65(A) (E) and 81 of Bombay Prohibition Act. The grounds of detention has been supplied to the petitioner on 6.11.2000 under sec. 9(1) of the PASA Act.

The respondent-State has not filed any affidavit in reply inspite of the fact that sufficient opportunity has been given to the respondent-State. Therefore, the averments made in the petition is remained uncontroverted.

Learned advocate Mr. HR Prajapati has submitted that the detention order is vitiated on the ground that at the time of passing the detention order, the petitioner was in judicial custody. Last offence registered against the petitioner on 2.10.2000 and detention order has been passed on 6.11.2000. Mr. Prajapati has also raised contention that on page 22, certain documents have been demanded by the petitioner, but no reply has been received from the repsondent-State and not only that no document has been supplied as demanded by the petitioner. This fact has been verified from learned AGP Mr. Kodekar with the assistance of the officer concerned, who remained present in the Court. Mr. Kodekar has fairly submitted that at page 22, Annexure-C, the item No. 2 copy of FIR registered as C.R. No. 3158/2000 and copy of statements of Jagdishkumar Nanjibhai, Udaykumar Navnitlal and other staff members have not been supplied to the petitioner. This factual aspect is not disputed by the learned AGP. Mr. Prajapati has relied upon the decision of the Apex Court, reported in AIR 1983 SC p. 300, wherein non-furnishing of copies prevented the detenu to make effective representation and hence violated Article 22(5) of the Constitution of India and, therefore, the Apex Court held that the detention is not justified. In respect to the contention that the petitioner was in judicial custody at the time of passing the detention order, learned advocate Mr. Prajapati has relied upon two decisions of the Apex Court reported in 1985 SCC(Cri.) page 514 and 2001(1) SCC p. 341. Learned advocate Mr. Prajapati has submitted that the Apex Court has observed that detention order must have to be passed

after subjective satisfaction of the detaining authority. When the detenu already in jail, than the detaining authority must have satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail. In absence of such subjective satisfaction detention order cannot be sustained.

I have heard the learned advocates appearing on behalf of the respective parties. According to my opinion, considering the grounds of detention, when the petitioner is in judicial custody as mentioned in internal page 3, page 21 of grounds of detention, the detaining authority has not considered the cogent material in coming to the conclusion that the detention is the only option and no other remedy is available. IN the grounds of detention, the detaining authority has not mentioned that any bail application has been filed by the present petitioner and, there are likelihood of granting the bail in favour of the present petition. In absence of such material, according to my opinion, considering that two decision referred above of the Apex Court, the detention order is required to be quashed and set aside. In respect to second contention about non-supply of documents which fact has not been disputed by the learned AGP and, therefore, not to supply the documents when it was demanded by the petitioner, it amounts to denying the right of effective representation and which violated Article 22(5) of the Constitution of India. These are the undisputed facts and considering the decisions of Apex Court as referred above, according to my opinion, order of detention is vitiated and, therefore, following order is passed:

In the result, this petition succeeds and the same is allowed. The order of detention dated 6.11.2000 is vitiated and resulted to quash and set aside. The detenu Bharat Khusaldas Somaiya who has been detained at Surat Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H.K. RATHOD, J.)
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